HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

(Division Bench)

CORAM : **Hon'ble Shri S.R. NAYAK, CJ**
& Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO.4926 OF 2005

Petitioner

(1) Haider Ali Rizavi, S/o Shri Yusuf Ali, Aged 43 years, Occupation: Service, working as Asstt. Teacher, Middle School Sarwani, Block – Bamhnideeh, Teh. Champa, Distt. Janjgir-Champa (C.G.)

VERSUS

Respondents

(1) State of Chhattisgarh, through Secretary, School Education Department, Mantralaya, Shastri Chowk, Raipur (C.G.)

(2) The Secretary, General Administration Department, Govt. of Chhattisgarh, D.K.S. Bhawan, Mantralaya, Shastri Chowk, Raipur (C.G.)

(3) The Collector, District – Janjgir Champa (C.G.)

(4) The District Education Officer, District – Janjgir Champa (C.G.)

(5) Rajendra Kumar Tiwari, Asstt. Teacher, Middle School, Podidalha, Block – Akaltara Distt.- Janjgir Champa (C.G.)

(6) Shri Megha Ram Sahu, Hon'ble Minister, School Education, Sports and Youth Welfare, Govt. of Chhattisgarh, Raipur (C.G.)

(7) Shri Batdeo Uranv, President B.J.P. Mandal, Bamnideeh, R/o Choria via Baradwar, Distt. Janjgir-Champa (C.G.)

(8) Shri Mahendra Sharma,
Mandal Sanghatan Mantri,
B.J.P. Mandal, Bamnideeh,
R/o Pachori, via Bamnideeh,
Distt. Janjgir-Champa (C.G.)

Present:

Mr. Rajeev Shrivastava, learned counsel for the petitioner.
Mr. Sumesh Bajaj, learned Dy. Govt. Adv., for the State of Chhattisgarh.

ORAL ORDER
(Passed on 29th of November 2005)

The following Order of the Court was passed by

S.R. Nayak, CJ:

The petitioner is a teacher in a Middle School, Sarwani. By the impugned order dated 31/08/2005 he has been transferred from that School to Middle School, Podidalha. The validity of the said order is assailed in this writ petition filed under Article 226 of the Constitution of India. The impugned order is assailed on the grounds, (i) that the impugned order is vitiated by mala fides; (ii) the impugned order is passed at the instance of respondents 7 and 8 and (iii) that the policy laid down by the State Government by virtue of which he has been transferred is itself illegal in view of the order of this Court dated 20/08/2001 passed in Writ Petition No.1351 of 2001. These are the only contentions urged by Mr. Rajeev Shrivastava, learned counsel for the petitioner at the time of the argument.

(2) We do not find any merit in all these contentions. Before dealing with the contentions, it needs to be noticed the restricted scope of judicial review in the matter of transfers of public servants particularly

those employees who are working under the State. It is well settled that it is the prerogative of the State-employer to decide who should work where to meet the exigencies of service and in the public interest. The transfer order could be successfully challenged only on certain grounds; such as, (i) that the order is issued by an incompetent authority; (ii) that the order is vitiated on account of the established mala fide and (iii) the order is issued in contravention of mandatory provisions of any statute or regulations or rules framed thereunder. We are of the considered opinion that none of these grounds are available to the petitioner to assail the validity of the impugned order. It is true that in the order of this Court dated 20/08/2001 passed in Writ Petition No.1351 of 2001. This Court has opined that conferring a discretion on the Minister In-charge of the department to approve transfer made in departure of the general policy would be illegal. With utmost respect and after necessary reflections, we are not in a position to fall in line with the learned Chief Justice. If the State Government contemplates transfers of its employees in departure of the general policy to sub-serve extra-ordinary situation or exigency arising in the service under the State and in such exigency or situation, if it is provided that the transfers could be effected with the concurrence or approval of the Minister In-charge of the department who is accountable not only to the Legislature but also to the citizenry, such conferment of power could not be attacked on any permissible grounds. Be that as it may, it is not the contention of the learned counsel for the petitioner that the State Government committed any error or violated any law, in conferring such power on the Minister In-charge. If the conferment of the power on the Minister to approve the transfer in departure of the policy to

meet the exigencies of the service or extra ordinary situation emerging in the department is valid, the transfer order could not be attacked on the ground that the conferment of the power on the Minister is bad in law.

(3) This takes us to the second ground urged by Mr. Rajeev Shrivastava, learned counsel for the petitioner. Although learned counsel would meekly submit that the impugned order is vitiated on account of mala fide, when we specifically drew the attention of the learned counsel to take us through the factual matrix laid in the pleadings, the only thing to which the learned counsel would draw our attention is paragraph 5.7 of the writ petition. It reads as follows:

> "**5.7** The petitioner finds it pertinent to mention here that a transfer policy was framed by the State Government on 30-6-2001 containing the similar clause regarding approval of the minister for transferring an employee. This policy was challenged before this Hon'ble Court by a batch of petitions and one of such petition was W.P. No. 1351/2001 filed by C.G. Anusuchit Jati Avam Anusuchit Janjati Adhikari Avam Karmachari Sangh & others and those petitions were decided by the order dated 20-8-2001 passed by this Hon'ble Court and this clause regarding approval of the minister for transferring an employee was turned down by this Hon'ble Court. A copy of the order passed by this Hon'ble Court is filed herewith as ANNEXURE P/4. Therefore, the present policy is contrary to the said order passed by this Hon'ble Court. Hence it is an illegal policy and transfers cannot be made on the basis of such an illegal policy. However, taking the recourse of the policy vide order impugned the petitioner has been transferred from Middle School Sarwani to Middle School Podidalha and shocking to the petitioner when the petitioner enquired about the reasons for his transfer, the petitioner learned that the transfer has been made on the basis of a letter written by the Respondent No. 7 & 8 ANNEXURE P/5 to the Incharge Minister Respondent no. 6 which was approved by the Respondent No. 6 for transferring the petitioner from Middle School

Sarwani to Middle School Podidalha consequently the transfer order dt. 31-8-2005 ANNEXURE P/6.

The allegation contained in paragraph 5.7 is as vague as it could be and scanty. However,Mr. Rajeev Shrivastava would specifically draw our attention to the allegation that the transfer order was issued on the basis of a letter written by respondents 7 and 8. It is stated in paragraph 5.7 that after receipt of the impugned transfer order, when he made enquiry, he came to know that the sixth respondent Minister passed the impugned order at the behest of respondents 7 and 8. Quite curiously, the source of information is not disclosed for the reasons best known to the petitioner. Be that as it may, if the respondents 7 and 8 who are holding certain offices in local bodies and if they had made representations and the Minister In-charge even assuming that he has taken into consideration along with other materials and ultimately decided to transfer the petitioner in the public interest, the said action cannot be faulted with simply because the Minister In-charge has taken into account not only other relevant materials but also the letter written by respondents 7 and 8. It needs to be noticed that so long as the action of the sixth respondent is not vitiated by mala fide, factual or legal, the action taken by him cannot be condemned as arbitrary or illegal simply because the letter written by respondents 7 and 8 has also gone into the decision-making. We say this because it is the prerogative of the State employer to decide who should serve where. It is not the vested right of any employee under the State to insist that he should be allowed to serve at a particular place or in a particular post. On the other hand, it is the liability of each and every public servant to be transferred from one post to another post, which is

equivalent and from one place to another place. If this right of the State Employer is meddled or interfered with by the Court lightly, we are afraid, the public administration would collapse and would not be effective in sub-serving the public interest. That is why the Apex Court in umpteen number of decisions and almost all the High Courts have circumscribed and highlighted on the limited scope of judicial review and cautioned themselves not to interfere with the transfer orders lightly unless weighty grounds are made as noted above. We do not find any of those grounds in the present case. It seems to us that this is a desperate attempt on the part of the petitioner to stick on to a post at a particular place to serve his self-interest. In the result, we dismiss the writ petition, however, with no costs.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge

Brajesh*